THE HON'BLE SRI JUSTICE N.V. RAMANA

-

Writ Petition No. 26178 of 2000

Dated: 16.12.2005

Between:

S. Malla Reddy, E.31706, Retd. Driver of Falaknuma Depot, S/o Durga Reddy, 59 years, R/o 18-5-170, Outside Aliyabad, Municipal Ground, Old City, Hyderabad.

..... PETITIONER

AND

1 The A.P.S.R.T.C., rep. by its Managing Director, Musheerabad, Hyderabad and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

-

Writ Petition No.26178 of 2000

Order:

Questioning the action of the respondents in abruptly retiring the petitioner from service before attaining the age of superannuation vide proceedings No.E2/693(2)/99-Falaknuma Depot, dated 30.10.1999, and not paying the balance terminal benefits, the present writ petition is filed.

The case of the petitioner, in brief, is that he was appointed as a driver in the respondent-Corporation in the year 1967, and at the time of entry into the Corporation, his date of birth was recorded as 01.02.1942 in all his service records and there was no change or alteration of his date of birth at any point of time. Respondent No.2 herein also issued a notification, vide proceedings

No.E2/693(2)/99-FM, dated 30.06.1999, notifying that on attaining the age of superannuation, the petitioner would retire from service on 31.01.2000. The grievance of the petitioner is that when he was directed to produce school certificate in proof of his date of birth he approached the School and he came to know that the School where he studied, was closed and not in existence, and he informed the same to respondent No.2. Thereafter, respondent No.2 issued the impugned proceedings No.E2/693(2)/00-FM, dated 30.10.1999 to the petitioner, stating that he had attained the age of superannuation of 58 years on 31.03.1999, and he was deemed to have retired from service with effect from 31.03.1999 and the service rendered by him from 01.04.1999 to 31.10.1999 i.e., beyond the date of superannuation, is being treated as contract service and the settlement of his accounts would be calculated up to 31.03.1999, the date of his superannuation. Hence, the present writ petition is filed.

A counter affidavit is filed by the respondent-Corporation denying the allegations of the petitioner and stating that at the time of appointment as the petitioner without any proof declared his date of birth as 01.02.1942, he was sent to medical examination at A.P.S.R.T.C. Hospital, and the Civil Surgeon of A.P.S.R.T.C. Hospital, vide Medical Certificate No.19132, dated 30.03.1967, has assessed the age of the petitioner as 26 years as on 30.03.1967, and accordingly, his date of birth was entered as 01.02.1942. Subsequently, as per the orders of the Regional Manager, Hyderabad City Region, during October 1999, the dates of birth of all the employees recorded in their respective Service Registers had been verified with the available documents, such as, Transfer Certificates/Medical Certificates issued by the competent authority. Pursuant thereto, the employees were directed to produce proof of their age. As no certificate in proof of date of birth of the petitioner was available on record, a notice was issued to him to produce documentary evidence in proof of his date of birth. As the petitioner did not produce any satisfactory evidence to prove his date of birth as 01.02.1942, the respondent-Corporation, based on the certificate issued by the Civil Surgeon, A.P.S.R.T.C. Hospital, Taranaka, dated 30.03.1967, fixed the date of birth of the petitioner as 30.03.1941 as per the Regulation No. 19 (2) (b) of the A.P.S.R.T.C. Employees (Service) Regulations, 1964, and accordingly the impugned proceedings were issued ordering that the petitioner was deemed to have retired from service with effect from 31.03.1999 and the service rendered by him from 01.04.1999 to

31.10.1999 i.e., beyond the date of superannuation was treated as contract service, and no interference is called for therewith.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Corporation.

Admittedly, at the time of joining the service, the petitioner did not produce any certificate in proof of his age and date of birth. There is no dispute that the respondent-Corporation entered the date of birth of the petitioner as 01.02.1942 in all his Service Registers based on the Medical Certificate, dated 30.03.1967, issued by the Civil Surgeon of A.P.S.R.T.C, Hospital, Tarnaka. It is also the admitted case of the respondent-Corporation that at no point of time, the date of birth of the petitioner was either changed or altered. Based on the Medical Certificate issued by the Civil Surgeon, the date of birth of the petitioner was entered by the respondent-Corporation, and they even acted upon it for all these years, and they basing on the said date of birth of the petitioner, have also issued a notification under Regulation No.6 (1) (a) of the A.P.S.R.T.C., Employees (Service) Regulations, 1964, vide proceedings No.E2/693(2)/99-FM, dated 30.06.1999, notifying that on attaining the age of superannuation, the petitioner would retire from service on 31.01.2000. The respondent-Corporation having acted upon the date of birth of the petitioner on the basis of the Medical Certificate issued by their own Civil Surgeon, could not have issued the impugned proceedings retiring the petitioner from an ante date 31.03.1999 rescinding the notification dated 30.06.1999. In that view of the matter, the impugned proceedings dated 30.10.1999 are unjustified and are liable to be set aside.

Accordingly, the writ petition is allowed and the impugned proceedings dated 30.10.1999 are set aside. The respondent-Corporation is directed to treat that the petitioner as has retired from service on 31.01.2000 and to pay all the monetary benefits to the petitioner till the said period, within a period of four months from the date of receipt of a copy of this order. No costs.

N.V. RAMANA, J.

Date: 16.12.2005

Nsr/Ksr